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CURRENT TOPICS

Common Law and Liberty

THE authoritative voice of LORD MACMILLAN has been added to those calling for a return to the principles and freedoms guaranteed by the common law. In his Andrew Lang lecture, on "Law and Custom," delivered at St. Andrew's University on 5th April, he said: "The lover of our ancient laws and institutions, which we have inherited from our fathers, cannot but look on with some dismay at the process which we see daily in operation around us whereby the customary common law of the land, which has served us so well in the past, is being more and more superseded by a system of laws which have no regard for the usages and customs of the people, but are dictated by 'ideological theories.' There will soon be little of the common law left either in England or in Scotland, and the statute book and the vast volumes of statutory rules and orders will take its place. The work of our courts is more and more concerned with the interpretation of often unintelligible legislation, and less and less concerned with the discussion and development of legal principles. Advocacy has consequently lost much of its intellectual interest and scope." He added that unnecessary legal restrictions which interfered with freedom of action and the settled ways and customs of the people inevitably led to evasion and a general lowering of moral standards. Lord Macmillan's call is an example of the vigilance with which freedom is protected by lawyers, who are its traditional guardians.

The Bar and Law Reform

THE whole field of law reform was the subject of a survey by the ATTORNEY-GENERAL at the annual meeting of the Bar on 5th April (reported at p. 217 of this issue). The announcement (whether on behalf of the Bar or on behalf of the Government remains to be seen) of the hope that the introduction of the Rushcliffe reforms would be one of the first measures in the next session of Parliament was welcome as far as it went. At any rate it may be reasonably assumed that those particular changes are not far away. Other and more remote changes to which the ATTORNEY-GENERAL referred were those affecting "the complexity of the procedure, the lack of finality until the matter has been pursued through each level of a three-tier and sometimes a four-tier system," the "shocking" condition of the Statute Book and the multiplicity of reported cases. "If we look at our legal machinery with objectivity and detachment," he stated, "I am sure that we can improve its efficiency and, incidentally, make our own profession less precarious." At the same meeting a motion was passed urging the General Council of the Bar to examine and make proposals with reference to procedure before administrative tribunals. It is to be hoped that in view of this resolution those in authority will think twice before repeating that all is well with these tribunals.

The Budget

THERE are many concessions to be grateful for in the Budget proposals—income tax and purchase tax reliefs, entertainment duty reductions, and a smaller increase than might have been expected in the duties on tobacco and alcohol. The heavier taxes on bookmakers were inevitable, for, as the CHANCELLOR said, "it will be generally agreed that a comprehensive scheme to cover all betting—on and off the course—which is equitable, cannot be introduced without radical amendment of the gambling laws." More serious doubts may well be entertained as to the efficacy of the proposed levy on investment capital, with its estimated yield of £50,000,000 in 1948–49 and total yield of £105,000,000. It is a graduated levy on persons whose total incomes exceed £2,000 in respect of investment income of over £250, and rises from 2s. in the £ (£250 to £500) to 10s. in the £. Although the Chancellor claimed that it is a once-for-all levy, Mr. CHURCHILL pointed out for the Opposition that it did not rest with the Chancellor. Even as a "disinflationary" element, it seems difficult to justify, and its long term effect may well be to discourage saving. Moreover, as the Chancellor admitted, the levy will largely be paid out of capital, and the effects of transferring large amounts of capital from private estates to the Government cannot be foreseen. Somewhat ironically, it is a lawyer who, as Chancellor, has proposed a levy which cannot have good effects on the administration of trust estates, the social benefits of which lawyers have reason to appreciate.

Estate Duty and the Budget Resolutions

AMONG the Budget resolutions which have attracted little attention in the Press are two of particular interest to solicitors. Of these, one is of immediate practical importance and relates to estate duty as respects persons dying on or after 7th April, 1948. In such cases property passing on the death of the deceased will be deemed, in the words of the resolution, to include "(*a*) money received under a policy of assurance effected by the deceased on his life and wholly or partly kept up out of money comprised in or arising under a settlement made by the deceased; and (*b*) money received under a policy of assurance effected on the life of the deceased under a settlement made by the deceased." The effect appears to be to overrule the decision in *Barclays Bank, Ltd.* v. *A.-G.* [1944] A.C. 372, that such policy moneys were not liable to estate duty under s. 2 (1) (*c*) of the Finance Act, 1894, and accordingly duty will be payable on the capital value of the policy moneys even where the beneficial interest arising on the death is that

of a life tenant. The other resolution to which attention may be drawn is that empowering the Government to enter into arrangements with countries which have no duty corresponding to United Kingdom estate duty, for the relief of double taxation in relation to estate duty and any duty payable in such countries on or by reference to death. The scope of such arrangements is restricted to the question of locality of property, and the first convention under this power —that with the Netherlands—is, according to an announcement by the Board of Inland Revenue, expected to be signed shortly. This convention will, it is stated, have effect for deaths on or after 1st July, 1948.

The Temple

THOSE who are not familar with the Temple will find it hard to understand why the architectural correspondent of *The Times* called his article in the issue of 8th April "The Temple Replanned," for the plan shown in his article seems to be very similar to the present lay-out. The Middle Temple library is again to occupy its dominating position by the Victoria embankment, but is to be built to a better design. The situation of the Inner Temple library and Hall is likewise to remain unchanged. Those who know the Temple will realise that the proposed changes are substantial. Brick Court and Essex Court are to remain an open space once the present unsightly temporary library is no longer needed, Tanfield Court is to be open and instead of the Middle Temple's destroyed Lamb Buildings, they exchange that site for part of the destroyed Harcourt Buildings, where a New Lamb Court is to be erected. A new archway will lead to a replanned Crown Office Row. Fig Tree Court is to disappear. A triple archway will replace the glazed brick tunnel between Tanfield Court and King's Bench Walk, and the destroyed cloister of eight arches on the east side of Pump Court is to be replaced by the seven-arched cloister originally planned by Sir Christopher Wren. Although many of us will not live long enough to see the rebuilt Temple, it is heartening to see some restoration work in progress, even if it is at present on a necessarily limited scale.

A Civil Service Tribunal

DURING the war those concerned for the liberty of the subject secured the appointment of a High Court judge to preside over a committee to hear appeals from persons ordered to be detained under Reg. 18B of the Defence Regulations. One would expect some similar protection to be accorded in times of peace to those who are threatened with loss of employment or status on account of alleged communist or fascist sympathies. The PRIME MINISTER said, in answer to Squadron-Leader FLEMING in the Commons on 6th April, that he did not regard legal experience or knowledge as an essential qualification for members of the Advisory Board which is to act as an appeal tribunal. It is relevant to observe that the Prime Minister is a barrister and a solicitor's son and ought to appreciate that legal training is not merely "useful in order to enable one to judge anything," as he said, but essential for this purpose. The rules as to relevance, admissibility and weight of evidence are no mere technicalities, but accumulated wisdom based on centuries of experience of human nature. It is therefore a false contrast to say, as the Prime Minister did, that "in this matter I think experience and knowledge of human nature is, perhaps, better than technical legal qualifications." When Mr. W. J. BROWN asked whether what was wanted was not legal erudition, but political horse-sense, and the Prime Minister indicated assent, they provided the strongest possible argument against the possibility of any political purge being conducted impartially except by one who is trained to be impartial.

Registration of Business Names: New Forms

As from 12th April the forms to be used for all purposes under the Registration of Business Names Act, 1916, as amended by the Companies Act, 1947, are those contained in the Business Names Rules, 1948 (S.I. 1948 No. 678). The rules contain a form of application for registration by a company which becomes liable to register by virtue of s. 58 of the Act of 1947 (Form RBN 1B), and other new forms are Forms RBN 7, 7A, 8 and 8A, to be used by individuals or firms desiring amendment of the registered particulars or removal from the register in cases where changes of name of the individual or of partners in the firm need no longer be registered as a result of s. 116 (5) of the 1947 Act. It should be noted that the old Form RBN 1B (application for registration by a corporation other than a company as defined in the Companies Act, 1929) is now renumbered RBN 1C.

Military Law and Troops Abroad

A NEW clause has been accepted in the Army and Air Force (Annual) Bill, and was passed in Committee on 9th April, to meet the situation produced by the recent decision of a divisional court that an officer or soldier who, without being discharged or placed on the reserve list, was placed on the unemployed list with liability to recall at any time, ceased to be subject to military law. The clause amends s. 158 of the Army Act—applicable also to the Air Force Act—to ensure that such a person can be brought to trial although the three-month period specified in the Act has elapsed, provided that the offence was committed outside the United Kingdom and was punishable by ordinary law. The consent of the Attorney-General will be necessary, but s. 161 of the Army Act will not be amended, so that a trial must in all cases begin within three years as heretofore. During the debate the ATTORNEY-GENERAL stated that civilian officers of the Control Commission were liable to be tried by the courts established by the Control Commission in Germany, and the difficulty was that the jurisdiction of those courts was territorial, with the result that once officers of the Control Commission got back to this country, they could not be compelled to return to Germany for trial. It would be necessary, he said, to consider providing other machinery for dealing with that type of case.

The National Health Service Dispute

THE public, no less than the immediate parties to the dispute between the doctors and the MINISTER OF HEALTH, have ground for relief at the important step taken by the Minister towards allaying the anxiety of doctors by announcing on 7th April that a short Bill would be introduced to ensure that no full-time salaried service can be imposed on doctors under the National Health Service Act. Another important step, as announced by the Minister in a Parliamentary written reply, is the appointment of a committee of distinguished lawyers (Mr. G. O. SLADE, K.C., Chairman, Mr. COLIN PEARSON, Sir CYRIL RADCLIFFE, K.C., Mr. J. H. STAMP and Mr. J. H. PHILIP, K.C., of the Scottish Bar) to consider whether it is desirable, in order to secure an equitable result as between partners, to amend ss. 35 and 36 of the National Health Service Act, 1946. The full terms of reference are set out at p. 221, *post*.

Longevity and the Law

A SMALL announcement in the Press last week which merits notice by lawyers is that Mr. A. C. SMITH, of Earsham, Norfolk, a retired solicitor and former Town Reeve of Bungay (Suffolk), celebrated his 103rd birthday on 5th April, 1948. In establishing records of longevity lawyers have no small achievement to their credit, and among them centenarians, as always, deserve special mention and congratulation. While the aged among us can look back upon better times, as in the case of Mr. Smith, who collected income tax at the rate of 2d. in the pound, it is none the less significant that their longevity is achieved in modern and, as it is alleged, more trying times.

Recent Decision

IN a pensions appeal on 7th April (*The Times*, 8th April), DENNING, J., held that no appeal lay to the High Court under the Pensions Appeal Tribunals Act, 1943, from a pensions appeal tribunal on the assessment of the extent of disablement under s. 5 of the Act.

RECENT CHARITY CASES—I

WHEN the Attorney-General referred at the recent annual meeting of the Bar (p. 217 of this issue) to the multiplicity of reported cases as "the jungle and wilderness of the law," he was using words which have been applied to the tangle of authority on the legal conception of charity (see 61 L.Q.R. 268). Considerable new growth has, in due accord with the season of the year, been recently apparent in this familiar plantation. It is hoped that any poor benighted wayfarer endeavouring to hack his way through the thicket may find some guidance in the following brief survey of part of the terrain.

Foremost among the spate of recently reported decisions on charities is that of the House of Lords in *National Anti-Vivisection Society* v. *Commissioners of Inland Revenue*. It is reported at [1948] A.C. 31, and its obvious significance is that it overrules the long-standing decision of Chitty, J., in *Re Foveaux* [1895] 2 Ch. 501, of which the headnote asserted that societies for the suppression and abolition of vivisection are charities within the legal definition of the term. A majority in the House of Lords now holds, apparently for the first time, that if a main object of a body is to secure (though by legitimate means) an alteration in the law, that object, being a political one, is effective to prevent the body from being regarded as established for charitable purposes only. The House had before it a good deal of positive evidence relating to the beneficial intentions of the society, but came to the clear conclusion that those intentions were not decisive of the question whether or not the objects of the society were for the public benefit so as to bring the case within the fourth head of Lord Macnaghten's famous classification of charities in *Pemsel's* case [1891] A.C. 531. Approving a statement of Russell, J., as he then was, in *Re Hummeltenberg* [1923] 1 Ch. 237, it was held that the court must determine this question on balance after weighing all the evidence before it. In the result, the society's claim to exemption from income tax under s. 37 (1) (*b*) of the Income Tax Act, 1918, was rejected.

It is manifest from several of the speeches in the *National Anti-Vivisection* case that the element of public benefit is a necessary ingredient of all four kinds of charity set out by Lord Macnaghten, and not merely of those in the fourth class. The four heads, it will be remembered, are (1) the relief of poverty; (2) the advancement of education; (3) the advancement of religion; (4) other purposes beneficial to the community. Though it is only the fourth class which refers in terms to public benefit, yet it must now be taken that public benefit is a paramount requirement in all cases. *Re Compton* [1945] Ch. 123 implied this plainly enough, but the force of the express reference in the fourth head to benefit to the community is now explained by Lord Simonds and Lord Wright as importing a difference of onus or presumption. "Where a purpose," says Lord Simonds, "appears broadly to fall within one of the familiar categories of charity [*scilicet* heads 1 to 3] the court will assume it to be for the benefit of the community, and therefore charitable, unless the contrary is shown, and . . . the court will not be astute in such a case to defeat upon doubtful evidence the avowed benevolent intention of a donor." The words "unless the contrary is shown" as used in this passage have now been interpreted by the Master of the Rolls in *Re Coats' Trusts* (1948), 92 SOL. J. 205 (see (1) below).

Obviously this overriding test of charity must be distinguished from its converse. *Re Strakosch, deceased* [1947] 2 All E.R. 607, furnishes a reminder that not every trust beneficial to the community is necessarily charitable.

Several of the recent cases have concerned gifts or trusts which it was sought to bring within the third class of charity. The variety of creeds professed by donors and beneficiaries in these cases indeed effectively underlines the fact that the word "religion" in the third head is not confined to any particular religion, denomination or sect. Thus *Re Eastes, deceased* [1948] 1 All E.R. 536 held to be charitable a trust for purposes connected with a Church of England parish church; *Re Coats' Trusts, supra*, and *Re Flinn, deceased* [1948] 1 All E.R. 541, concerned the Roman Catholic religion; *Re Moon's Will Trusts, ibid.*, p. 300, the Wesleyan Methodist, and *Re Norman* [1947] 1 All E.R. 400, a body of Evangelical Christians known as "the Brethren." "In the eyes of the court all established and accepted religions stand equal," said Evershed, L.J., in *Re Coats*. In *Thornton* v. *Howe* (1862), 31 Beav. 14, Sir John Romilly, M.R., upheld a trust for propagating the sacred writings of Joanna Southcote. He said, however, that the court would not assist the execution of a bequest to a sect whose tenets inculcated doctrines adverse to the very foundations of all religion and were subversive of all morality. This is apparently the key to Lord Greene's parenthetic reservation in *Re Coats*: "This does not mean that the court will recognise as a religion everything that chooses to call itself a religion."

A more significant subtlety in this connection is discussed at (2) below.

Re Coats is an important and interesting case. To begin with it invests with the authority of the Court of Appeal one branch of the well-known decision in *Cocks* v. *Manners* (1871), L.R. 12 Eq. 574. Then again it exhibits a conveyancing device which is increasingly to be seen nowadays, making a condition of validity, so to speak. The principal gift was only to take effect if the purposes of the beneficiary community were charitable, with a gift over otherwise. To such expedients are benefactors driven by uncertainties in the law. The conundrum is passed to the executor or trustee for solution. Perhaps the will considered in *Re Moore* [1901] 1 Ch. 936 set the fashion in its bequest of a limited interest "for the longest period allowed by law," though there the testatrix sabotaged her ingenuity by going on to define that period incorrectly (see the interjection of Joyce, J., at p. 937). In *Re Coats*, the gift appears to have been made in the form it was in order to provide an adequate opportunity for testing the question whether a trust for an order of contemplative nuns is a good legal charity. *Cocks* v. *Manners* decided that it was not, but in that case (as in others turning on the effect of the mortmain statutes) the institution in question was concerned not to prove but to deny that it was a charity.

The Carmelite nuns of *Re Coats* live in complete seclusion and engage in no practical or outside work, charitable or otherwise. They engage, as did the Dominican nuns figuring in *Cocks* v. *Manners*, in prayer and in the love and contemplation of divine things. These activities indicate at first blush a private religious trust, but three interesting contentions were advanced in an unsuccessful attempt to show that the overriding requirement of public benefit was satisfied so as to bring the particular case within the second Macnaghten head:

(1) It was sought to deduce from the speeches in the *National Anti-Vivisection* case that the presence of the public element will be assumed in a religious trust unless the evidence in a particular case shows that an alleged religious charity is on balance positively harmful to the public. But Lord Greene, M.R., pointed out that for the purpose of the passage from Lord Simonds' speech quoted above the contrary of "beneficial to the public" is not "detrimental to the public," but "non-beneficial to the public." "The gift," he goes on, "may be a most beneficial one, it may tend to the advancement of religion, yet, if it appears that the benefit is a private and not a public one, the gift fails to satisfy the conditions requisite in the case of a valid charitable gift."

(2) Then there was unimpeachable evidence which Lord Greene said could be summarised by saying that in the belief of the Roman Catholic Church the lives and prayers of such orders as that to which the nuns belonged were particularly efficacious in securing grace from heaven for the human race. It was argued that this belief amounted to a religious doctrine, the truth of which could not be questioned by the court, because, according to the established proposition noted above, the truth of an accepted religion is not the concern of the court. The Court of Appeal, however, made a vital distinction here. Though, in deciding whether or not a gift is for the advancement of religion, the court does not concern itself

with the truth of the religion, because that is not susceptible of proof, yet the overriding question of public benefit is a question of fact which must be answered by the court by means of evidence cognisable by the court. The fact that the adherents of a religion believe a particular purpose to be of public benefit is not sufficient.

(3) Lastly, it was contended that the evidence showed as a fact that the sisters by the holiness of their lives and by their example provided such a source of edification to Catholics, and, indeed, to non-Catholics, as to constitute the necessary public benefit. Both the Master of the Rolls and Evershed, L.J., dealt in detail with this contention and rejected it. Lord Greene concluded that the nuns were to be paid, not to do good, but to be good, and that the conception of doing good by being an example to others was quite unlike anything which had been considered in the past a good charity, and in his lordship's opinion could not be justified by any known principle.

J. F. J.

Divorce Law and Practice

SOME ASPECTS OF THE DOCTRINE OF CONDONATION

It is perhaps surprising that a case in which the facts were similar to those that came before the Court of Appeal recently, in *Fearn* v. *Fearn* [1948] W.N. 98, had not previously been reported. The facts are such that they must have arisen on numerous occasions during the recent war and yet *Fearn* v. *Fearn* seems to be the first reported case in which they were considered. The case concerned a war-time marriage in which the husband served abroad from August, 1941, to September, 1945, continuously. In July, 1944, the wife wrote to her husband confessing that she was pregnant by another man, with whom, she said, she had been friends for some time. She did not give his name. In reply to this the husband wrote that he would always love his wife, but that if she wished to leave him for the other man he would not stand in her way. In reply to a further letter from his wife he wrote that he had forgiven her and that the thing could and must be lived down. A child was born to the wife in August, 1944, but even after that the husband continued to write to his wife in the most affectionate terms. In September, 1944, the husband wrote to his wife that he had been receiving letters hostile to her from his family, and protested continued love for her and said he would put a stop to such letters. Later, on 22nd September, he wrote again expressing a change of attitude and saying that his family and other people had told him that she was associating with men and that she must have been concealing the truth from him and that despite continued affection for her he must now get a divorce. On these facts the husband petitioned for a decree on the grounds of adultery and the wife pleaded condonation. In the court of first instance the judge held that there had been condonation as the husband had completely forgiven his wife and had restored her to her former position. This decision was, however, reversed by the Court of Appeal who considered that condonation was not proved.

The reasons for this decision were given by Bucknill, L.J., in his judgment and it is clear from that that the decision rests on two propositions. He said, firstly, that the husband had not by his conduct reinstated the wife to her former position, that is the position she occupied in relation to her husband before she confessed to him. He secondly came to the conclusion that with facts such as those of the present case formal words of forgiveness could not, by themselves, constitute condonation. To take these reasons in order, the first one seems a trifle odd at first sight, for if, as happened in this case, when the husband heard of the wife's adultery he did nothing to cause the position of the wife with regard to himself to change then it would seem there could not possibly be any reinstatement of the wife in her former position. If her former position was not altered, then it seems clear she could not be reinstated into the position she was already in. From this it follows that if the circumstances are such that the wife cannot be reinstated then there is nothing that the husband can do that will amount to condonation unless mere words of forgiveness are considered to be sufficient by themselves to constitute condonation; that brings us to the second proposition upon which the Court of Appeal decided this case. In the second half of his judgment, Bucknill, L.J., came to the conclusion mentioned above, namely, that in this particular case at any rate words of forgiveness, however strong, were not in themselves sufficient, and the reasons he gives are cogent. After mentioning *Cramp* v. *Cramp* [1920] P. 158, in which the comparative unimportance of words of forgiveness as compared with acts of reinstatement (in that case the subsequent intercourse) is considered, he went on to consider the principles underlying the doctrine of condonation. He emphasised the fact that condonation is an absolute bar to a decree and not a discretionary bar and that therefore a high degree of proof must be required before it can be established. This is, of course, an important aspect of the matter, for were it otherwise a party might be permanently precluded from presenting a petition because he had in a moment of tension and mental strain forgiven his wife for an offence which, when he had longer to think the matter over, he might have considered to be unforgivable. The learned lord justice also considered as a factor the principle that the husband must not, after acquiring knowledge of the offence, so behave as seriously to prejudice the wife, and in this case he had not done so.

What then does this case decide? It is respectfully suggested that the effect of this decision is to emphasise the absolute necessity for reinstatement by the condoning spouse of the erring spouse into the position the latter had held before the former became aware of the matrimonial offence. It follows, as a corollary of this, that where there has been no change in the " conjugal cohabitation " between the parties then there can be no condonation despite words which amount to complete forgiveness. It is not difficult to imagine circumstances which would give rise to very odd results arising from this decision when husbands and wives are separated by duty for long periods as was, of course, only too common during war time but is now, fortunately, of much less frequent occurrence though not by any means unknown. One is tempted to ask whether the result of *Fearn* v. *Fearn* would have been any different if, instead of changing his mind and deciding on a divorce some two months after he had heard of the offence, the husband had verbally forgiven the wife as in this case and had continued to treat her as forgiven for several years and then changed his mind. She would still never have been reinstated in her original position, as she had remained in that position throughout. That, however, leads only to speculation.

In view of the somewhat new light thrown on the doctrine of condonation by this case it might perhaps be of some interest to recapitulate shortly the law on the subject as it stands at the present time, for there is a tendency to think of condonation primarily as forgiveness whereas in fact this is patently not the case, as is shown so clearly in *Fearn* v. *Fearn*.

A definition of condonation that has been used in textbooks up to the present time is " the conditional forgiveness of any matrimonial offence, the implied condition being that the offence shall not be repeated." In the light of *Fearn* v. *Fearn* it is now clear that that definition falls somewhat short of the actual meaning of the term, which might now perhaps be more accurate if expanded to " the conditional overlooking of any matrimonial offence, which must result in the reinstatement of the erring spouse to the conjugal cohabitation that he or she enjoyed before the offence became known to the condoning spouse." It is quite obvious from both those definitions that the English law has developed a doctrine which

does not coincide by any means with the Christian or the lay conception of forgiveness—a fact which was pointed out most forcibly in the classic judgment of McCardie, J., in *Cramp* v. *Cramp*. One of the distinctions between the legal conception of condonation and the lay or Christian idea of forgiveness is that whereas by the latter forgiveness obliterates the offence completely, the legal conception is that condonation merely covers the offence over as with a veil and though the offence is hidden from view so long as no further offence is committed the veil may be roughly cast aside should there be a recurrence of the matrimonial sin. In other words, the subsidiary doctrine of revival is a distinguishing feature of the legal conception of condonation.

It is a necessary ingredient of condonation that the person against whom condonation is alleged must be proved to have complete knowledge of the offence which he is alleged to have condoned, but in this connection the effect of the decision in *Bernstein* v. *Bernstein* [1893] P. 292, must be remembered, for there it was decided that the condonation by a husband of the adultery his wife had committed with one man could not be construed as condonation of the adultery his wife had previously committed with another man and of which the husband had no knowledge at the time of the condonation.

A further aspect of the doctrine which must be remembered is that the courts will be more ready to accept that a husband has condoned an offence by his wife than they will be to hold condonation against the wife, for the obvious reason that the wife may treat the husband in a way that might be construed as condonation not because she wishes to forgive him but because she may well be in the position where it is extremely difficult for her to do anything else. The alternative for the wife might be nothing less than having to go forth into the world without means of support or anywhere to go.

From all the above, brief description of the doctrine though it is, it will be seen that condonation is a word with a specialised meaning which cannot be lightly interpreted as simple forgiveness; further, it would seem that the Court of Appeal have by their decision in *Fearn* v. *Fearn* added yet one more rider to the legal doctrine which makes it even more incomprehensible to the layman, who may perhaps now be excused if he goes away mumbling, after Pope: "To err is human; to forgive divine," and leaves the lawyers to work out for themselves the true meaning of the human aspect of condonation.

P. W. M.

A Conveyancer's Diary

THE EFFECT OF DIVORCE ON SETTLEMENTS ON A FUTURE SPOUSE

In *Re Slaughter* [1945] Ch. 355, the question before the court was whether a divorced wife could take any benefit under an appointment made in exercise of a power to appoint for the benefit of any wife of the appointor who should survive him. The authorities were fully considered, but it seems to me that a fuller analysis of the earlier cases may be of interest to the draftsman for two reasons. The precedents in the books for this type of limitation vary, but the notes appended thereto do not appear to explain the somewhat subtle distinctions which the courts have put upon their construction; and in any case I do not think that the event of divorce was very much in the minds of the authors of some of these precedents. Now that divorce has become so common an event, the draftsman should, in my opinion, pay much more attention to this possibility and its effect on trust documents.

The earliest authority in point is *Bullmore* v. *Wynter* (1883), 22 Ch. D. 619, where a testator settled his residence upon his daughter for life, and after her death "in trust for any husband with whom she might intermarry, if he should survive her, for his life." On the petition of the husband the daughter's marriage was dissolved, and the husband married again. On the death of his first wife he claimed a life interest in the fund. Fry, J., held that as the husband was a husband with whom the daughter intermarried, and as he survived her, he fulfilled the words of the bequest; and the learned judge rejected the argument that, in order to qualify, the husband had to be her husband at the date of her death, as not justified by the wording of the bequest. The possible difficulty which might arise in such a case if the same wife were to leave more than one husband surviving her was considered insufficient to overrule the plain meaning of the will.

This decision was not followed in *Re Morrieson* (1888), 40 Ch. D. 30, where the bequest was to a son for life, and after his death "in trust to pay unto or permit any wife of such son to receive" the income of his share during her life. The son married, divorced his wife, and died without remarrying. Kay, J., held that as the wife's life interest was to commence at the death of the son, that life interest was evidently meant for a widow, and at the moment of the son's death there was no such person as his widow. The learned judge further held that the possibility of the son marrying again after a divorce and leaving a lady who would unquestionably be his widow on his death was not (as had been held in *Bullmore* v. *Wynter*, *supra*) a contingency which could be disregarded, but rather a mode of construing the will. He went on to say that he could not understand the latter decision, and would have decided it the other way had it come before him. As it was, the difference in the wording of the two bequests justified a contrary decision.

So matters stood when *Bosworthick* v. *Clegg* [1929] W.N. 133 came before Maugham, J. (as he then was). In this case the disposition under which the divorced spouse claimed was not, as in the cases already considered, a direct bequest, but a power of appointment. A fund was settled upon the wife for life, and it was provided that she might by deed or will appoint "unto or for the benefit of any husband who might survive her an interest for the term of his life or any less interest in the whole or any part of" the fund. The wife appointed an annual sum to her husband, from whom she was subsequently divorced on her own petition. In the course of the proceedings for divorce the settlement under which the husband claimed this annual sum was varied, but as it was held that the order making this variation did not affect the construction of the settlement, on which the husband's claim depended, this fact is immaterial. The wife died after the divorce without ever having remarried. The *ratio decidendi* adopted by Maugham, J., was similar to that in *Re Morrieson*, *supra*: the person described as a husband "who may survive" was to be ascertained by the fact of his possessing the characteristic of being a husband; the wife might have married again and left a widower, and the settlement pointed to a single husband, not to a plurality of husbands. The husband in this case did not possess the characteristic of being a husband at the time when he survived the wife, and he was, therefore, not entitled to the annual sum appointed to him. The learned judge finally said that even if his own view on the construction of the settlement in question had been different, he would not have decided the question otherwise in view of the then recent decision of Eve, J., in *Re Williams*, to which I will refer later.

It is not my intention to offer a critique of any of the cases on this point, but it may be noted in passing that while the reasoning in *Re Morrieson* and *Bosworthick* v. *Clegg* followed the same lines, the wording on which the judgments were pronounced in the two cases was materially different. In the latter the qualification for entitlement consisted in two factors: being a spouse, and surviving the other spouse. There is no difference, as Maugham, J., pointed out, between expressions such as "any spouse who may survive" and "the surviving spouse;" and whatever the particular

expression may be, if both factors are involved in the qualification, the essential condition is that one spouse should survive the other *qua* spouse (or, to put it another way, *qua* widow or widower). This is a characteristic which the divorced spouse does not possess at the time of surviving, although (as was argued on subsequent occasions when the claim was to a benefit appointed, and not to a direct gift or bequest) the spouse may possess it at the time when the appointment is made. On the other hand, the bequest in *Re Morrieson* contained no mention of survivorship, and I think it is still open to the court to distinguish that decision on this ground, if a limitation in similar terms has to be considered.

The next case is the decision of the Court of Appeal in *Re Williams* [1929] 2 Ch. 361, affirming the decision of Eve, J., below. The wife in this case was married three times. Under a settlement made in contemplation of her first marriage, with H J C W, the wife's fund was settled on the wife for life and after her death on the issue of the marriage. The settlement provided that, in the events which happened and in the event of a possible remarriage, the wife was at liberty to revoke the trusts as to part of the settled property and to resettle the same for the benefit of any husband who might survive her. H J C W divorced the wife and she then married C H. After her second marriage the wife, in exercise of the aforementioned power, by deed appointed that part of the trust property should be held on trust to pay the income to her husband, C H, during his life. C H subsequently divorced the wife, who then married V E E. C H survived the wife and claimed payment of the income appointed to him. It was argued on his behalf that, as he was a proper object of the power when the appointment was made in his favour, the power had been duly exercised and was then at an end. This argument did not prevail, the court holding that in order to be a proper object of the power in such a case a person must not only survive the other spouse, but must also be a spouse at the time of the other spouse's death. The judgments of the court follow the line which is already familiar to my readers, and the only point of interest (apart from the authoritative nature of the decision on the construction of a power or benefit framed in terms importing the dual qualification of survivorship in the character of a spouse) lies elsewhere. Both Hanworth, M.R., and Lawrence, L.J., considered that *Bullmore* v. *Wynter*, *supra*, was distinguishable.

The latest case on this topic is *Re Slaughter* [1945] Ch. 355, in which a power to appoint " to or for the benefit of any wife of the life tenant who may survive him " was duly exercised by deed in favour of a wife, who later divorced the life tenant and survived him. Vaisey, J., expressed some sympathy for the proposition that where the appointment is made by deed the status of spouse, if then existing, makes the appointee a proper object of the power; but he felt himself bound by authority to take the other view, and rejected the wife's claim. The learned judge also felt grave doubt whether the decision in *Bullmore* v. *Wynter* could be regarded as an authority in view of the observations made upon it in *Re Morrieson*. As to this, I think, with respect, that as the Court of Appeal has not overruled that decision, and has indeed found it possible to distinguish it on the wording of the bequest on which it turned, it would be unsafe to assume that it is no longer an authority, should a similar expression come up for construction by the court. As I have already indicated, *Re Morrieson* is itself not beyond criticism.

To conclude this survey of the cases, mention should be made of *Marlborough* v. *Marlborough* [1901] 1 Ch. 165, where by a deed of resettlement power was given to the tenant for life to " appoint to any woman whom he may marry " for her life a jointure to be charged on the family estates. The life tenant having been divorced by his first wife and remarried, it was held by the Court of Appeal that the exercise of the power in favour of the second wife was valid, and not contrary to public policy.

Several conclusions may be drawn from these decisions. Firstly, the question whether a spouse who claims under any limitation of this kind was the guilty party in the divorce proceedings or not is immaterial. The only relevant question is whether the marriage has been dissolved or not. Secondly, in the case of benefits appointed to a spouse, where the instrument conferring the power imposes a condition of survivorship in the character of a spouse on the appointee, the fact that the appointee is, at the date of the appointment, a proper object of the power is also immaterial (*Re Williams*, *supra*). And lastly, comparatively slight differences in the choice of expression may lead to considerable divergence between intention and result. If a divorced spouse is intended to be excluded from benefit under gifts or powers to or in favour of a spouse, the form in *Re Williams* is appropriate. If it is intended to include a divorced spouse, the form in the *Marlborough* decision should be adopted, but care should be taken to limit (as was done in that case) the amount which a plurality of spouses may share between them. Drafts on these lines would seem to cover every likely case, and I hope this review of the authorities will convince my readers that to stray far beyond their limits is to risk an eventual application to the court.

Finally, the effect of a decree of nullity, such as was considered in *Re Dewhirst* (1948), 92 Sol. J. 84, raises totally different problems, and nothing which has been said here should be regarded as necessarily relevant to questions of that nature.

" A B C "

Landlord and Tenant Notebook

FARM TENANTS' NEW SECURITY OF TENURE

THE provisions for security of tenure contained in the Agriculture Act, 1947, which became law on 1st March, 1948, go a good deal further than those previously enacted. On first reading them one is reminded of the security conferred by the Rent Acts. But no analogy can be drawn. It is rights, not remedies, that are modified; and no status corresponding to that of the statutory tenant is created. Also it can be said that whether the changes are revolutionary or not is arguable; the position achieved may be described as the culmination of a progressive series of reforms which began when the first Agricultural Holdings Act, that of 1875, was found to be a dead letter because there was no restriction on contracting out, and (as farmers were easily persuaded to contract out) the restriction was introduced by the Act of 1883.

The operative words of the new code are the words " the notice to quit shall not have effect unless the Minister consents," to be found in s. 31 (1); but before examining the various qualifications, it is useful to consider part of the previous section, which deals with compensation for disturbance (and replaces s. 12 of the Agricultural Holdings Act, 1923). Like its predecessor, this section entitles a landlord to give notice to quit without incurring liability for such compensation for a number of reasons, provided he specifies the reason or reasons: these are now, in brief, bad husbandry, so certified by the Minister of Agriculture and Fisheries; failure to pay arrears of rent or to remedy a remediable breach of some term not inconsistent with good husbandry; material prejudice to the landlord's interest by an irremediable breach of such a term; bankruptcy or composition with creditors; death of the tenant with whom the contract was made within three months before the giving of the notice.

The importance of the above lies in the fact that s. 31 (1) sets to work as follows. First, there are two conditions, one precedent and one resolutive, to the invalidity of a landlord's notice: the tenant must give a counter-notice within one

month " requiring that this subsection shall apply to the notice to quit," and then " the notice to quit shall not have effect unless the Minister consents to the operation thereof." But the next subsection excludes the operation of subs. (1) in three cases: where the Minister has consented before the notice is given " and that fact is stated in the notice "; where one of the " reasons " just outlined applies, and, again, it is stated in the notice to quit that the notice is given by reason thereof; and where notice is given on the ground that the land is required for a non-agricultural use for which permission has been granted under the Town and Country Planning Acts, or for which, by virtue of those enactments, permission is not required, and that fact is stated in the notice.

Consent may thus be sought by a landlord before or after notice (cf. Defence Reg. 62 (4A)). But the next subsection contains a little code, itemising circumstances in which the Minister must withhold consent. In the first four cases, this obligation is imposed " without prejudice to the discretion of the Minister," and I confess that I find it difficult to suggest what the effect of this qualification can be. For we find that the Minister " shall withhold his consent . . . unless he is satisfied (*a*) that the carrying out of the purpose for which the landlord proposes to terminate the tenancy is desirable in the interests of efficient farming; (*b*) that it is otherwise desirable for the purposes of agricultural research, education, etc.; (*c*) where the tenancy was created after the passing of this Act [this was 6th August, 1947] that the landlord proposes to terminate the tenancy for a purpose, specified in the contract of tenancy, for which the interest of the landlord was held immediately before the creation of the tenancy, and that greater hardship would be caused by the Minister's withholding than by his granting consent; and (*d*) where the tenancy was created before the passing of the Act and the same person was landlord at the passing thereof as at the time when the notice to quit was given or previous consent applied for, that greater hardship would be caused by withholding than by granting consent.

It may be that the solution to the problem of discretion is this: there are, as it were, two distinct mental processes involved in coming to a decision in the above cases; fact finding and valuation. What a landlord's purpose is, what constitutes research, and when a tenancy was created, for instance, are questions of fact, and no discretion can operate in determining such, and it will presently be seen that some of these questions may be referred to arbitration; but whether farming is efficient, research desirable, or hardship would be greater, do call for the operation of judgment, and here discretion is not out of place. The " greater hardship " test is, no doubt, adapted from the proviso to para. (*h*) of Sched. I to the 1933 Rent Act; and the nature of such a problem can usefully be studied by reading the strictures on the judgment of Scott, L.J., in *Chandler* v. *Strevett* (1947), 64 T.L.R. 84, made in *Kelley* v. *Goodwin* [1947] 1 All E.R. 810 (C.A.) (see 91 SOL. J. 304).

The remaining case, (*e*), in which discretion is given no rein, is that the landlord proposes to terminate the tenancy for the purpose of the land being used for some non-agricultural purpose not one covered by (*c*).

On the whole, it can be said that there is more guidance available for the practitioner dealing with cases under s. 31 of the Agriculture Act, 1947, than in cases under Defence Reg. 62 (4A). And, as will presently be seen, there is at least far more opportunity for securing that facts are presented and considered.

Before dealing with machinery, it may be useful to mention sanctions contained in subs. (7) designed to prevent a landlord from attaining his object by misrepresenting his intentions. Consent may be made conditional, the conditions being such as to secure that the land will be used for the purpose indicated, and if the conditions are not satisfied within a reasonable time, the Minister may dispossess the ex-landlord. On the other hand, the Minister is empowered to vary or revoke the conditions which he has imposed if he be satisfied that by reason of change of circumstances this ought to be done.

Now for procedure. Regulations have been made under s. 8 (1), namely, the Agriculture (Control of Notices to Quit) Regulations, 1948, which, first of all, prescribe time limits for applications for consent when necessary. If made before notice is given, they must be made between twelve and three months before the year of the tenancy during which it is to be current. If after, they must be made within a month of the giving of the notice (this has been the practice in the case of Defence Reg. 62 (4A) applications). They must also be in writing (in either case) and follow a form to be found in the schedule to the regulations.

Next, in certain cases, the tenant is entitled, when challenging the notice, to have the question referred to arbitration under the Agricultural Holdings Act, 1923. These cases are when the notice is said to be given on the ground of failure to comply with a notice to pay arrears of rent or to remedy a remediable breach of a term not inconsistent with good husbandry; the alleged material prejudice caused by some irremediable breach; and the alleged requirement for a non-agricultural purpose for which permission has been granted under town and country planning legislation.

Apart from this, subs. (4) of s. 31 of the Act provides that the Minister may neither give nor withhold consent until opportunity for making representations has been given. (Under Defence Reg. 62 (4A) a party may get no hearing: *Irving* v. *Patterson* [1943] Ch. 180.) I discussed the machinery of representation-making in the Notebook of 27th March (92 SOL. J. 177). And what is of great interest and importance is that either party who is dissatisfied with the Minister's decision may appeal, in these cases, to the Agricultural Land Tribunal.

In the event of reference to arbitration as described above, and in the event of an appeal to the tribunal, the notice to quit is suspended till the question has been decided; while if the result is to confirm the notice and this is attained within six months before expiry, the arbitrator or tribunal may postpone such expiry by any period not exceeding twelve months.

R. B.

TO-DAY AND YESTERDAY

LOOKING BACK

ON 17th April, 1778, Boswell had an interesting conversation with Dr. Johnson. Mr. Oliver Edwards, a solicitor, who had been at Pembroke College with the Doctor in 1730, had said that he should have been of a profession and Boswell repeated this to him. " Johnson: ' Sir, it *would* have been better that I had been of a profession. I ought to have been a lawyer.' Boswell: ' I do not think, sir, it would have been better, for we should not have had the English Dictionary.' Johnson: ' But you would have had Reports.' Boswell: ' Ay; but there would not have been another who could have written the Dictionary. There have been many very good judges. Suppose you had been Lord Chancellor; you would have delivered opinions with more extent of mind and in a more ornamented manner than perhaps any Chancellor ever did, or ever will do. But I believe causes have been as judiciously decided as you could have done.' Johnson: ' Yes, sir. Property has been as well settled '." Boswell recalled having been told by Sir William Scott, afterwards Lord Stowell, how upon the death of Lord Lichfield he had said to Johnson: " What a pity it is, sir, that you did not follow the profession of the law. You might have been Lord Chancellor of Great Britain and attained the dignity of the peerage; and now that the title of Lichfield, your native city, is extinct you might have had it." Johnson on this seemed much agitated and exclaimed angrily: " Why will you vex me by suggesting this, when it is too late? " Earlier in the day Johnson had said to Boswell: " Lawyers know life practically. A bookish man should always have them to converse with. They have what he wants."

TATTOO STORIES

EVERYTHING comes into court sooner or later, even a tattooed serpent. It started before the Blandford magistrates with a

summons by a wife against her husband for alleged assault. The quarrels between them arose, it appeared, from the portrait of a lady tattooed on his arm, a constant reminder of a bigamous deviation from his matrimonial allegiance. The bench adjourned the matter to enable him to get the lady's likeness removed. A London specialist in the art achieved her transformation into a serpent and, domestic peace having been restored, the wife asked permission to withdraw the summons. The husband, in a glow of satisfaction, offered to show the magistrates his re-decorated arm, but the chairman was not sure he liked snakes and declined. In the United States, one feels sure, they would have been more responsive, to judge by a fairly recent Trans-Atlantic episode. A man calling himself the Human Autograph was brought before a magistrate, who asked him why he was making so much noise, to which he answered: "I have 1,265 names tattooed on my chest." The magistrate, evincing suitable interest, then asked: "Is there room for mine?" The man said that he had room for fifteen more, that, as a rule, he only accepted names after death, but that he made some exceptions and would be glad to do in this case. So the magistrate took his place beside Hitler, Tito, "Legs" Diamond, Mussolini and others on the living roll of fame.

THE BACCARAT CASE

A RECENTLY-published book of memoirs, "Youth is a Blunder," provides a postscript to one of the most sensational of the Victorian *causes célèbres*, the great baccarat case. The author is the daughter of the central figure of the trial, Sir William Gordon-Cumming, whose social ostracism was the sequel to it. How he passed his days thereafter, a landowner and a man of means, if no longer a man of fashion, is now told, rounding off the story of a scandal which in the 'nineties came near to shaking the British throne. Sir William was accused of having cheated at baccarat at a country house party at Tranby Croft. On the advice of two friends he signed a document which amounted to an admission of guilt, on the understanding that secrecy would be preserved. When, nevertheless, the matter became public, he brought an action for slander; he explained that he had signed not because he was guilty but in order to avoid scandal. After a sensational legal battle the verdict of the jury went against him. From the public point of view an enormous amount of embarrassment was created by the fact that the Prince of Wales had taken part in the game and was among those who had countersigned the fatal document. He was called to give evidence in the case and immediately became the object of a public outcry of a violence out of all proportion to any blame that could be attached to a not very reckless evening's play. He never forgave Sir Edward Clarke, who appeared for the plaintiff, for referring in his speech to "the foibles of a prince." Years later, meeting Sir Squire Bancroft, he was reminded that they were both born in 1841. "A good vintage year" said Bancroft, and enumerated other figures it had produced, Bishop Boyd Carpenter, "Jacky" Fisher, Clarke—"We can leave him out" snapped the Prince.

ANNUAL MEETING OF THE BAR

The annual general meeting of the Bar was held in the New Hall of Lincoln's Inn on 5th April, presided over by the Attorney-General (The Rt. Hon. Sir Hartley Shawcross, P.C., K.C., M.P.), who expressed his own appreciation and that of the assembly for the work done by the Bar Council during the past year.

Sir Hartley said that in times past the Council was perhaps rather inclined to take a somewhat negative view of its responsibilities and had looked askance at suggestions for law reform. Those days were, fortunately, past. The Council nowadays was very much alive to the importance, not only from the narrow point of view of the profession but in the public interest generally, of active intervention in the various problems of law reform and law administration that confronted the country. During the past year the Council had borne a very heavy burden of work in regard to those matters and made its influence increasingly felt. For that, gratitude was due to all members of the Council, and the Bar owed much to the courage and encouragement of those two great leaders of the profession, Mr. G. O. Slade, K.C., and Sir Cyril Radcliffe, G.B.E., K.C., the latter being present as Vice-Chairman, but the former being unable to attend as he was engaged on a case abroad.

There were two questions in which the Bar Council had an increasingly important role to play—legislation and law reform. This was inevitably a period of unprecedented legislative activity, and, he thought, would have been so whatever might have been the political complexion of the Government. The resultant pressure on our legislative machine meant that we had to have increasing recourse to the practice of delegated legislation. There had not been the same opportunity for the detailed scrutiny of measures by Parliament as in days gone by, but he paid tribute to that most devoted body of men, the Parliamentary draftsmen, who had been working under conditions of extreme pressure.

In those circumstances the Council could really perform a work of great public importance in conducting a detailed examination, not of the policy, but of the legislative provisions of Bills before they were passed into law; and during the past year it had done that to an increasing and most valuable extent. All of the Council's recommendations, whether accepted or rejected, had been given the most careful consideration and had been of the very greatest utility and value, not only to the Government but also to the Opposition. That was as it should be, because the efficiency of Parliament depended upon the efficiency of both sides of the House; and the Bar Council had certainly made, and he hoped would increasingly continue to make, an important contribution to the efficiency of our legislation.

PROCEDURAL REFORMS

Referring to the machinery of our law, the Attorney-General said that we ought not to rest too much on the deservedly high reputation of British justice. British justice was unequalled, but the cost of it was excessive; the delays which it often involved were open to grave suspicion; the complexity of its machinery was often seriously disadvantageous; and the necessity of pursuing matters through each level, sometimes of a three- and sometimes even a four-tier system, were matters which he thought were open to considerable criticism.

So far as the actual cost of litigation to the litigant was concerned, the position would of course be greatly ameliorated when the Rushcliffe proposals were brought into operation, which it was hoped would be during the next session. Those proposals, however, would do nothing to reduce the actual cost of litigation, or to save the pockets of those often not at all wealthy litigants who fell outside the somewhat narrow income limits of the Rushcliffe scheme—they would do nothing to remove those causes, complexity of machinery and procedural delays, which had led the trading community of this country, possibly to an extent greater than in any other country in the world, to avoid the ordinary machinery of our courts. There were most important and fundamental reforms that could be made. In regard to those we had to wait and to rely upon the study, which was now taking place, by the two committees appointed for the purpose by the Lord Chancellor in recent months. He hoped very much that the Council and the Bar would be able to assist the work of those committees by putting forward objective and far-reaching proposals which should improve the efficiency of our law.

It would not be appropriate for him to mention any particular matters on which the view of the profession might be called for. Obviously there were very important questions of jurisdiction—jurisdiction of the different existing divisions of the High Court as between themselves, and as against that other and most useful and important court, the county court. Those were matters which had to be carefully looked into.

Then there was the question of how far the multiplicity of reported cases—"that jungle and wilderness of the law," as some distinguished judge called it—was really helpful to clear decision; or whether it might not be a good thing only to report the decisions of, say, the Court of Appeal and the House of Lords. There was also the question already alluded to as to whether it was really desirable or necessary, before you reached finality, to have to go through two and sometimes three appellate stages. All those were matters which had to be considered and in regard to which the Bar should have some voice and be able to submit proposals and recommendations to the two committees that were sitting.

ADMINISTRATIVE TRIBUNALS

Some three months ago he initiated a study of the practice which was being pursued by the different administrative tribunals under the various statutes under which they were established—to ascertain what procedure they were following in matters like the calling of witnesses, cross-examination, publicity and so on. He thought it might be useful if it were found possible to establish some kind of uniform code of procedure for all administrative tribunals, but it was not easy, because the precise functions of

these different tribunals were so very different. A few of them were dealing with something in the nature of *lis inter partes*, in which they had to decide which of two parties was right or wrong; but very often they were performing what was rather an informative function, enabling a Minister to test the strength of local opposition, or to assess the weight of criticisms which might be advanced against particular proposals, and enabling him the better to make up his own mind as to what was the correct policy to pursue. The actual use of administrative and expert tribunals was something which was now well and firmly established in our constitutional machinery. The present Government had made no significant change in regard to it and they had introduced no new principle.

He always felt that perhaps it was misleading to talk in this connection about the rights of citizens and the ordinary principles of justice, because in the main these administrative tribunals were not purporting to administer justice between man and man; what, as a rule, they were seeking to do was to find out how some policy, decided upon by Parliament, could best be implemented and put into operation so as to secure, on the one hand, the greatest good of the greatest number and, on the other hand, the least injustice to a vast number of people. It was quite wrong to apply to them the canons and principles that one would apply to the ordinary courts of law. He always remembered in this connection what Lord Shaw said so long ago as 1915, and it was rather comforting to those in the Labour Government to think that these discussions were taking place so long ago as that. Lord Shaw said:—

> "But that the judiciary should presume to impose its own methods on administrative or executive officers is a usurpation. And the assumption that the methods of natural justice are *ex necessitate* those of courts of justice is wholly unfounded . . . in so far as the term 'natural justice' means that a result or process should be just, it is a harmless, though it may be a high-sounding expression; in so far as it attempts to reflect the old *jus naturale*, it is a confused and unwarranted transfer into the ethical sphere of a term employed for other distinctions; and, in so far as it is resorted to for other purposes, it is vacuous."

He (Sir Hartley) had seen administrative tribunals working and, by and large, he did not consider them to be bad. That they were not perfect was obviously true; that there was room for great improvement in many respects he did not doubt; but in these matters lawyers must remember that they also lived in glasshouses!

He added that the increasing amount of Parliamentary and administrative work that fell to the lot of the law officers nowadays made it impossible for him to have as much contact as he would like to have with his colleagues, either in the courts or at his inn of court, and so on. He occupied his present position by the chance of politics, but was never quite sure whether it was a good thing that the leadership of the Bar should go to someone who owed his position to a political party. That was why he was particularly glad that the increasing activity of the Bar Council and the increasing influence of the profession was making itself felt through the machinery of the Council. But though, like distinguished predecessors, he had not abandoned the pursuit of politics, so far as his functions as Leader of the Bar were concerned he tried to divorce them entirely from political matters and to make himself completely available to and at the disposal of all members of the Bar. He hoped that nobody stood in awe of him, and that whenever there was anything at all that he could do they would approach him feeling that he would be only too glad to do it, because he was very grateful for the support and consideration they had shown him during the time he had held that office.

Sir Cyril Radcliffe, G.B.E., K.C., Vice-Chairman of the Council (in the absence of Mr. Gerald Slade, who is abroad), moved the adoption of the printed and circulated annual statement of the General Council of the Bar; Mr. J. D. Casswell, K.C., seconded, and the motion was duly carried.

Sir Cyril said that when one spoke of the work of the Council during the year it might be said that under present conditions, when a great deal of change was taking place in the legal and administrative structure of the country, the price of justice was eternal vigilance. There were many occasions when something could usefully be noted and promoted, and continual watch must be kept for points calling for revision and alteration in order that steps to adjust them might be taken in time. He elaborated various financial and other matters in the statement. As to fees for devilling, he said that whereas in the past it was apparently the exception rather than the rule for such fees to be paid, under present circumstances the idea that a man could come to the Bar and support himself in early years out of private or parental resources did not belong to the world in which we moved to-day. It was important that young people who had no independent resources should not be prevented from joining the Bar by the difficulties or uncertainties of those early years, and that they should not be discouraged and turned away from what might otherwise prove a successful practice in the course of a year or two. They must continue to attract and retain the higher level of talent in the country in the service of the law. On the subject of pupils in chambers, if they believed, as they did and as was so constantly asserted, that the merits of our law and of our legal system were such that they should be studied and to some extent copied by other countries, then they had the corresponding obligation that when students came from other countries, intending to return to them, to obtain the prestige of the English Bar—which was done and which it was good should be done—they should make every possible effort to see that such students were given every chance of finding places in barristers' chambers for their study of the English practice of law and for their call to the Bar accordingly.

Mr. G. R. Upjohns, C.B.E., K.C., moved, and Mr. R. T. Monier-Williams seconded, the meeting's thanks to the retiring auditors and expressed approval of the appointment of those for the ensuing year.

Sir Andrew Clark, Bt., K.C., and Mr. William Latey, M.B.E., expressed the Council's appreciation of the services of those scrutineers who counted the votes at the last election.

The Attorney-General at this stage sought the views of the meeting upon the subject of special fees of circuit, as to whether the Council should await the report of the Evershed Committee before any further step was taken; alternatively, whether the meeting wished to have a referendum of the practising Bar upon the system of circuit special fees, and, if so, upon terms circulated at the meeting or otherwise. A very considerable divergence of views was evidenced, both from the platform and in the hall, and after lengthy discussion there appeared to be an overwhelming majority in favour of proceeding, without awaiting the Evershed Report, to take a referendum—in a form to be decided upon by the Council.

Mr. W. R. Rees-Davies moved and Mr. L. F. Sturge seconded a resolution in terms set out on the agenda, but following numerous expressions of opinion upon the subject a motion was eventually agreed: "That this meeting, mindful of the traditional responsibility of the Bar of England for upholding the rights of the citizen, views with concern the formidable growth of administrative and quasi-judicial tribunals, and urges the General Council of the Bar to examine procedure adopted by such tribunals and to make such recommendations as it thinks fit in regard thereto"—the amended form being proposed by Mr. Cecil Havers, K.C., and seconded by Mr. G. Granville Sharp, K.C.

A proposition by Mr. W. J. H. Carter and Mr. W. Jackson Wolfe relating to revision of dock brief fees was, on the suggestion of the Attorney-General, postponed until the next meeting in view of certain recommendations of the Law Reform Committee of the Council.

The meeting terminated with a vote of thanks, proposed by Mr. Richard O'Sullivan, K.C., and seconded by Mr. J. N. Gray, K.C., to the Attorney-General for presiding—who, in reply, said that he needed no thanks, as it was his job and one which he enjoyed very much. He was very glad that the Bar was now showing a much greater vitality and an attitude indicating greater interest in the general problems of legislation and public affairs. Though they might differ in their views, it was gratifying to him and to all of them that the free Bar of this free country was now demanding to assert its own views and to exercise its own influence.

DOUBLE TAXATION: NETHERLANDS

Negotiations for double taxation conventions with Holland, concerning income tax, profits tax and death duties, have now been completed, and the conventions will be signed shortly.

The income tax and profits tax convention will follow, in general, the pattern of the agreements made already with the United States, the Dominions and certain Colonies.

The convention on death duties will incorporate a code of rules for determining, as between the two countries, the situation of various kinds of property for the purpose of charging British estate duty and Netherlands succession duty.

The income tax and profits tax convention will apply for the current tax year and the death duties convention will have effect for deaths on or after 1st July, 1948. The full texts of the conventions will be published following signature.

LAND REGISTRY FEES

The new Land Registration Fee Order (S.I. 1948 No. 517/L.3), which came into force on the 1st April, merely annuls the Land Registration Fee Order, 1939, and restores the operation of the Land Registration Fee Order, 1930, in its entirety. It is a model of brevity, and as it reduces registration fees and also simplifies the calculation of them it will be very welcome.

Broadly speaking, the effect of the 1939 order was :—

(1) A considerable increase of fees for first registrations of land in the voluntary areas and other applications relating to such land which previously attracted fees under scale No. 1 of the 1930 order.

(2) In the case of land in the voluntary areas it raised from £50 to £116 the maximum fee for registration of (i) a new lease other than a mining lease, and (ii) a freehold granted in consideration of a rent.

(3) In the case of land in the compulsory areas it rearranged the values at which the various rates of fee became payable for dealings for value and other applications relating to registered land, which previously attracted fees under scale No. 4 of the 1930 order. The result was a small increase of fees on values above £500 and below £10,000. See scale No. 4 of 1939 order.

(4) A larger increase of fees payable on dealings for value and other applications relating to registered land in the voluntary areas which previously attracted fees under scale No. 4 of the 1930 order. The increase was 6d. on a value of £125 and rose to £39 10s. on a value of £100,000. See scale No. 4A of 1939 order.

(5) It prohibited the authorised abatements of fees unless "claimed at the same time as application is made for registration."

Some dealings with registered land in the voluntary areas involve no more labour or responsibility than similar dealings with land in the compulsory areas; and at first sight higher fees for the former seem to be unjustified. But a great deal of the registered land in the voluntary areas is land in course of development and most of the dealings are transfers of part; which mean new plans and redrafting the entire register, and a case could be made for the higher fees. But the *ad valorem* method is a very rough and ready way of paying for the extra work, though possibly the only practical way. There are plenty of precedents for *ad valorem* charges and so long as they are graduated the opposite way to sur-tax they are generally acceptable.

In any case this question is no longer of interest since the 1948 fee order wipes out all the additional fees indicated above; and the compulsory and voluntary areas are now on the same basis as regards fees except for fees for surveys, searching the index map (but see below) and fees for nasty titles.

The effect of this new order on the cost of registration in the compulsory areas will be slight. In the voluntary areas the cost will be substantially reduced, especially in the case of first registrations, as the following specimen fees show :—

FIRST REGISTRATION

Value	*Fee in March*	*Fee in April*
£	£ s. d.	£ s. d.
1,000	3 10 0	2 5 0
5,000	16 0 0	9 0 0
10,000	26 0 0	14 0 0

DEALINGS

1,000	2 15 0	2 5 0
5,000	14 10 0	12 10 0
10,000	29 10 0	25 0 0

No doubt the large increase in the value of land during the last few years has made this reduction of fees possible. But the costs of registration must also have increased considerably and it is a tribute to the Chief Land Registrar and his staff that the Department's expenditure is well below its revenue.

It may be added that the Chief Land Registrar has announced this week that he is able again to exercise the discretion vested in him by abatement No. 9 of the Land Registration Fee Order, 1930, and to remit the fee prescribed by para. XII (6) (*a*) for an official search of the index map in compulsory areas.

An ordinary meeting of the Medico-Legal Society will be held at Manson House, 26, Portland Place, W.1 (Tel.: Langham 2127), on Thursday, 22nd April, 1948, at 8.15 p.m., when papers will be read by Sir Geoffrey King, K.B.E., C.B., M.C., and Joseph Harold Sheldon, M.D., F.R.C.P., on "The Medico-Legal Problems of the Aged."

NOTES OF CASES

COURT OF APPEAL

DIVORCE: PETITION WITHIN THREE YEARS

Fisher *v.* Fisher

Lord Greene, M.R., Bucknill, L.J., and Hodson, J.
15th March, 1948

Appeal from Pilcher, J.

The appellant husband and the respondent, his wife, when respectively twenty-one and nineteen years of age, were married in July, 1946. Throughout the nine days of the honeymoon the wife would permit sexual intercourse only if the husband used a contraceptive, which he had available. She explained that she did not want to have any children. He was a serving soldier, and she was in the W.A.A.F. On his return home for a week-end she adopted the same attitude. He returned home for a week-end in September, 1946, but she refused him sexual intercourse because he had no contraceptive available. In November, 1946, she wrote to him that she did not love him enough to go on living with him. In January, 1948, she confessed to adultery committed from April, 1947, onwards. The husband applied for leave to present his petition for divorce on the ground of adultery within three years of the marriage. Pilcher, J., refused leave without giving a judgment setting forth his reasons.

BUCKNILL, L.J.—Lord GREENE, M.R., and HODSON, J., agreeing—said that, having regard to the youthfulness of the spouses and to the fact that the wife was in military service, the refusal during the honeymoon to have children and to permit intercourse without a contraceptive, which the husband possessed, did not constitute exceptional hardship on the husband justifying presentation of a petition within three years under the proviso to s. 1 (1) of the Matrimonial Causes Act, 1937. It was also not a ground of exceptional hardship within the proviso that the wife had within four months of the marriage intimated that she did not wish to continue with it, even though there was no hope of reconciliation. To hold that that was an exceptional hardship would involve a similar holding in every case where either spouse shortly after the marriage intimated the intention not to go on with it. Appeal dismissed.

APPEARANCES: *K. B. Campbell* (*Dale H. Parkinson, Services Divorce Department, The Law Society*); the wife did not appear and was not represented.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

RATING: EXEMPTION BY SPECIAL ACT

Wiltshire County Valuation Committee *v.* Boyce and Others

Scott, Asquith and Evershed, L.JJ. 15th March, 1948

Appeal from the Divisional Court.

In 1777, lands liable to tithes in favour of the incumbent of the Parish of Ramsbury, Wiltshire, were enclosed under the Ramsbury Inclosure Act, which provided that all lands within the parish belonging to the vicarage should be free from all parochial taxes and duties so long as the vicar of the parish should perform for the poor the offices of the church as vicar without reward. Wiltshire County Valuation Committee proposed to include in the valuation list (*a*) a hereditament let to a Miss Boyce on a yearly tenancy by the vicar, and (*b*) a council house erected by the rural district council on land let to them by the vicar on a lease for 999 years, occupied by one Orchard. The Divisional Court, upholding the decisions of Marlborough Assessment Committee, held that the exemption granted by the Act of 1777 remained applicable to both hereditaments. The county valuation committee appealed in respect of both hereditaments. By s. 2 (2) of the Rating and Valuation Act, 1925: "... the rating authority of each rural rating area shall, in lieu of making a poor rate for each parish, make and levy a general rate for the whole of the district." By s. 64 (1), nothing in the Act is to "affect ... (*b*) any exemption from ... rating conferred by any local Act ... on the occupiers of hereditaments ..." (*Cur. adv. vult.*)

SCOTT, L.J., reading the judgment of the court, said that the general rate substituted by the Act of 1925 for the poor rate had effected no change in the legal substance of the pecuniary liability on ratepayers. The enlargement of the area of collection from the parish to the district and the county had made no change of substance. The special exemption granted by the Act of 1777 in perpetuity could accordingly only be abrogated by a subsequent statute containing a special cancellation or abrogation addressed to land. The Act of 1925 contained no such cancellation or

abrogation. On the contrary, by s. 64 (1), it preserved the special exemption intact. The land let by the vicar on a 999 years' lease none the less "belonged" to him. It was, therefore, also included in the exemption. Appeals dismissed.

APPEARANCES: *Harold Williams*, K.C., and *Squibb* (*Radcliffes and Co.*, for *The Clerk to Wiltshire County Council*); *Dare* (respondent, Miss Boyce) (*Wallace, Pyman & Co.*, for *Phelps & Lawrence*, Ramsbury); *Blanco White*, K.C., and *McGougan* (for the respondents, the rural district council and Orchard) (*Ernest Bevir & Son*, for *H. Bevir & Son*, Wootton Bassett).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CHANCERY DIVISION

VENDOR AND PURCHASER: INNOCENT MISREPRESENTATION

Gilchester Properties, Ltd. *v.* Gomm

Romer, J. 2nd February, 1948

Action.

By a contract made in July, 1946, the plaintiffs agreed to purchase from the defendant a leasehold block of flats, the contract embodying the National Conditions of Sale. In the course of the negotiations, the defendant's solicitor informed the plaintiffs' solicitor that the flats were let at certain rentals and that "to the best of the vendor's belief, these rents appear to be standard rents." After completion, it was found that the rents paid were lower than had been stated by some £50 per annum, and the purchasers brought an action for specific performance with compensation.

ROMER, J., said that, assuming that the information given to the plaintiffs' solicitors was sufficiently definite to constitute a representation, and that the plaintiffs had acted on the faith of it, it fell to be decided whether it constituted something in the nature of a warranty. In his view, the statements made were mere information given in response to requests made in the course of negotiations; they did not constitute a part of the contract itself or a collateral warranty, and the maker of a mere innocent misrepresentation was not liable in damages (*Heilbut, Symons & Co.* v. *Buckleton* [1913] A.C. 30). To grant specific performance with compensation would cut across the principle laid down by that case, and further, it had been laid down in *Rutherford* v. *Acton-Adams* [1915] A.C. 866, that such relief could be granted only when there was a deficiency in the subject-matter described in the contract. *Powell* v. *Elliott* (1875), L.R. 10 Ch. 424 appeared at first sight to be an authority to the contrary, but examination of the actual record of the case had shown that the inaccurate description complained of had been incorporated in the actual contract. The present case was one in which inaccurate information had been innocently given in answer to a request for information made during preliminary investigations; when it was discovered to be inaccurate, the proper remedy for the purchaser to seek was rescission, not specific performance with compensation. The action would be dismissed, with costs.

APPEARANCES: *Lindner* (*Harry Baker*); *Pascoe Hayward*, K.C., and *Burnett-Hall* (*Murray Napier & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

DISCOVERY: IMPLIED OBLIGATION REGARDING DISCLOSURES

Alterskye *v.* Scott

Jenkins, J. 24th February, 1948

Procedure summons.

The action was brought for rescission of a contract to purchase a hotel on the ground of alleged misrepresentations regarding the former profits and conduct of the business. In particular the plaintiff alleged that the defendant had committed breaches of the regulations regarding quantities of food and fuel purchased and prices paid for food and charged for meals. The plaintiff required a further and better affidavit of documents regarding the above matter; the defendant admitted that the affidavit so far filed was inadequate, but objected to making a further and better affidavit except on an undertaking by the plaintiff not to make use of the documents disclosed for any ulterior or collateral purpose, as the defendant had been visited by the police and officials of the Ministry of Food after the filing of the original affidavit, and he suspected that the plaintiff was making improper use of the documents disclosed.

JENKINS, J., said that among the authorities cited *Bowden* v. *Russell* (1877), 46 L.J. Ch. 414; 36 L.T. 177 and *Kitcat* v. *Sharp* (1882), 52 L.J. Ch. 134; 48 L.T. 64, showed that it was contempt of court to circulate pleadings with abusive remarks, and no undertaking against such conduct should be necessary. In *Williams* v. *Prince of Wales Life Assurance Co.* (1857), 23 Beav. 338, and *Hopkinson* v. *Lord Burghley* (1867), L.R. 2 Ch. 447, letters marked "private and confidential" were ordered to be produced upon an undertaking not to use them for any collateral purpose. It was not the usual practice to require such undertakings, and it seemed therefore that the implied obligation to make no improper use of disclosed documents was regarded as sufficient generally. The cases in which undertakings had been ordered did not concern affidavits of documents, but production of particular documents. It did not seem desirable to include such an undertaking in an order for a further and better affidavit; such an undertaking would be difficult to frame unless directed to certain specific ends or restricted to a particular document. The defendant must rely on the general implied obligation; if he could substantiate any particular improper use, he could bring proceedings for contempt or for an injunction. It would be open to the defendant in making his affidavit to claim that particular documents were confidential and that he required an undertaking of some kind by the plaintiff before production, and if the form of the undertaking could not be agreed, the matter could then be brought before the court. He would accordingly make an order for a further and better affidavit. Costs would be the plaintiff's costs in any event.

APPEARANCES: *C. A. Settle* (*Bell & Ackroyd*); *Lindner* (*Tobin & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

LANDLORD AND TENANT: LESSEE ENEMY ALIEN

Edward H. Lewis & Son, Ltd. *v.* Morelli and Another

Denning, J. 16th February, 1948

Action.

The plaintiffs in 1926 let restaurant premises in London to the first defendant, an Italian, for twenty-one years, on a lease containing a proviso for re-entry for breach of covenant. The second defendant lived on the premises and conducted the business for the Italian. The Italian went to Italy in 1939, and was there when war broke out between Italy and Britain. In June, 1940, the landlords granted the second defendant a weekly tenancy of the premises. In July, 1946, the Italian returned to England and claimed that his lease was still in existence. On the expiry of the lease in 1947 the landlords, the second defendant having claimed to be a statutory tenant and refused to quit, brought an action for possession. The Italian did not defend the action.

DENNING, J., said that the real question was whether the lease to the Italian remained in existence after June, 1940, when he became an enemy alien. If it did, the landlords would have been unable to grant any tenancy to the second defendant. There was no surrender by operation of law, because the necessary consent of the Italian was lacking (*Wallis* v. *Hands* [1893] 2 Ch. 75). The war with Italy did, however, dissolve the contract, whether of partnership or agency, between the Italian and the second defendant. That meant that there was no one in this country authorised to perform the covenants of the lease on behalf of the Italian. He would be unable to authorise anyone to act for him because that would involve a doing here of the act of communicating with an enemy. After the outbreak of war with Italy, therefore, the landlords were entitled to forfeit the lease. They exercised their right of re-entry by letting the premises to the second defendant, who, therefore, had a valid lease, and was now entitled to the protection of the Rent Restrictions Acts. There was an estoppel, as between the second defendant and the landlords, which prevented the raising of any point on the landlords' failure in 1940 to obtain the leave of the court under the Courts (Emergency Powers) Act, 1939, before proceeding to forfeit the lease, making the Custodian of Enemy Property a party to their application (*Morton* v. *Woods* (1869), L.R. 3 Q.B. 658, at p. 670, *per* Blackburn, J.). Judgment for the defendant.

APPEARANCES: *Rees-Davies* (*Burton, Yeates & Hart*); *Jukes* (*Cochrane & Cripwell*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

TRAINER WARNED OFF: RIGHT OF ACTION

Russell *v.* Duke of Norfolk and Others

Lord Goddard, C.J. 26th February, 1948

Action tried with a special jury.

The plaintiff was a trainer of racehorses. The allegation having been made that a horse for which he was responsible was drugged when it ran at a race meeting conducted under Jockey

Club rules, the defendants, the stewards of that club, held an inquiry, as a result of which they found that, while the trainer was entirely innocent of drugging the horse, he had been guilty of gross negligence. They therefore placed him on the list of disqualified trainers, thereby warning him off Newmarket Heath, and published that decision in their publication, the "Racing Calendar." The licence to the plaintiff to train horses during the material year, which was thus withdrawn, had been granted to him under r. 102 of the Jockey Club Rules, and he duly paid a subscription of £1 to a certain charity as prescribed by that rule. It was a written condition of the plaintiff's licence that it might be withdrawn or suspended by the defendants in their absolute discretion, and a withdrawal or suspension be published in the "Racing Calendar." The plaintiff's action for breach of contract was based on the allegation that the inquiry had not been fairly conducted. The libel complained of was the publication in the "Racing Calendar" of the defendants' decision.

LORD GODDARD, C.J., withdrew the case in libel from the jury. On the issue whether the inquiry had been fairly conducted, the jury were unable to agree. Lord Goddard said that, assuming, without deciding, that the £1 payable to the charity constituted consideration for a contract entitling the plaintiff to train horses for a year under the Jockey Club's rules and the terms of the licence, it was not an implied condition of that contract that the defendants should not purport to disqualify the plaintiff on grounds of misconduct without holding an inquiry, for which neither the rules of the club nor the conditions of the licence provided. If there was no duty to hold an inquiry at all, it was a fallacy to argue that there was a duty to hold fairly any inquiry in fact held. There was accordingly no case to go to the jury on the claim based on alleged breach of contract. *Chapman* v. *Lord Ellesmere* [1932] 2 K.B. 431 made it clear that there was also no case to go to the jury in libel. There was no allegation of malice to displace qualified privilege. The plaintiff had agreed as a term of his licence that a decision that he was guilty of misconduct might be published in the "Racing Calendar." The defendants had published in it only their decision that the plaintiff's licence was withdrawn, and they were not bound to give their reasons for so deciding. Judgment for the defendants.

APPEARANCES: *Roberts*, K.C., and *Geoffrey Howard* (*W. R. Bennett & Co.*); *Sir Valentine Holmes*, K.C., and *Richard Elwes* (*Charles Russell & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

METROPOLITAN POLICE: RECEIVER'S CLAIM FOR EXPENSES

Metropolitan Police Receiver *v.* Tatum

Wood *v.* Same

Atkinson, J. 12th March, 1948

Consolidated actions.

The Receiver for the Metropolitan Police was first appointed under the Metropolitan Police Act, 1829, as a person "to receive all . . . money applicable to the purposes of this Act and pay it into an account with the Bank of England." By s. 1 of the Metropolitan Police (Receiver) Act, 1861, he is given various powers, including power "to do all other acts necessary or expedient to be done in the execution of . . . his office." By the negligence (as Atkinson, J., found) of the defendant an officer of the Metropolitan Police was seriously injured while riding a motor cycle. The Receiver, having paid his hospital expenses and his salary and allowances while he was incapacitated, in accordance with regulations made by the Home Secretary, brought an action to recover from the defendant the sums so spent, the action being consolidated with the officer's action against the defendant for damages for personal injuries.

ATKINSON, J., said that the Receiver was entitled to recover the hospital expenses from the defendant. He was similarly entitled to recover the pay and allowances, for which no return was received by the Receiver as the officer was incapacitated when he received them. The money had been paid out by the Receiver in discharge of an expense which he was legally bound to incur as the result of the defendant's negligence. The Receiver was, moreover, also entitled to recover on the ground that he had incurred those expenses because he had been compelled to pay what the defendant, owing to his negligence, was legally liable to pay. That principle was enunciated in *Brook's Wharf* v. *Bull Wharf, Ltd.* [1937] 1 K.B. 534. Judgment for the plaintiffs.

APPEARANCES: *Flowers*, K.C., and *P. M. O'Connor* (*Ponsford and Devenish*); *Caulfield* (*A. J. Clements & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PARLIAMENTARY NEWS

HOUSE OF LORDS

Read First Time:—

RADIOACTIVE SUBSTANCES BILL [H.L.] [8th April.

To make provision with respect to radioactive substances and certain apparatus producing radiation.

Read Second Time:—

NATIONAL ASSISTANCE BILL [H.C.] [6th April.

PALESTINE BILL [H.C.] [7th April.

HOUSE OF COMMONS

Read First Time:—

HOUSE OF COMMONS MEMBERS' FUND BILL [H.C.] [7th April.

To amend the House of Commons Members' Fund Act, 1939.

Read Third Time:—

ARMY AND AIR FORCE (ANNUAL) BILL [H.C.] [9th April.

INDUSTRIAL ASSURANCE AND FRIENDLY SOCIETIES BILL [H.C.] [9th April.

SHOREHAM HARBOUR BILL [H.C.] [9th April.

QUESTIONS TO MINISTERS

NEAR-RIPE LAND (IDENTIFICATION)

Mr. WALKER-SMITH asked the Minister of Town and Country Planning what progress is being made with the definition and identification in particular cases of near-ripe land for the purposes of the Town and Country Planning Act, 1947; what procedure is being adopted in this matter; and whether Parliament will have any opportunity of pronouncing upon it before the Treasury Scheme referred to in s. 58 of the Act is considered by Parliament.

Mr. SILKIN: Identification cannot take place in particular cases until after 1st July, as no claims can be submitted before that date. There will be consultation with interested parties in due course. I hope thereafter that it will be possible to make a statement and the normal opportunities of raising the matter in debate will arise. [6th April.

MEDICAL PARTNERSHIPS (LEGAL COMMITTEE)

Mr. MONSLOW asked the Minister of Health whether he has yet any statement to make with regard to the legal committee, which he proposes to appoint, to advise him whether the National Health Service Act ought to be amended to secure an equitable result between partners in medical practice.

Mr. BEVAN: Yes. I am glad to say that I have been fortunate enough to enlist the services of the following gentlemen: Mr. G. O. Slade, K.C. (Chairman), Mr. Colin Pearson, C.B.E., Sir Cyril Radcliffe, K.C., Mr. J. H. Stamp and, from the Scottish Bar, Mr. J. R. Philip, K.C. The terms of reference are as follow:

"To consider whether, in the application of the principles set out below to partnerships existing at the appointed day, it is desirable, in order to secure an equitable result as between partners, to amend ss. 35 and 36 of the National Health Service Act, 1946, either by clarification of the provisions thereof or by the extension of the powers thereby conferred or in some other way, and to make recommendations accordingly.

The principles above referred to are—

(1) The general prohibition of the sale or purchase of the goodwill or any part of the goodwill of the medical practice of a medical practitioner whose name is on the appointed day or at any time thereafter entered on a list prepared under s. 33 (2) of the Act is to be maintained.

(2) Compensation is to be paid on the lines set out in s. 36 to practitioners whose names are on the appointed day entered on any such list, and subject to the provisions of s. 37, to such practitioners only.

(3) Practice in partnership is to be encouraged, and, except for the purpose of securing an equitable result, there should be as little interference as possible with the continued operation of existing partnerships.

(4) Within the general principle of the prohibition of sale and purchases of goodwill, exceptions in relation to sales or purchase in pursuance of a partnership agreement existing at the appointed day are permissible, if they appear necessary to secure the equitable working of these principles in relation to doctors practising in partnership.

(5) The possibility of legislation to make some addition to the sum of £66 million, for which provision is made in s. 36, in order to meet cases which might arise if doctors whose names were entered on a list at the appointed day were required, in pursuance of a partnership agreement existing at that date, to buy the goodwill of doctors whose names

were not so entered, is not excluded if such an addition appears to be necessary in order to secure an equitable distribution of the £66 million between doctors whose names are entered on a list at the appointed day." [8th April.

RENT TRIBUNALS (SECURITY OF TENURE)

Replying to a question by Mr. HOLLIS, the MINISTER OF HEALTH said that the increase of the three-months period of security of tenure afforded to tenants by rent tribunals would require legislation, of which there was no early prospect. Answering further questions, he said that it was undesirable to tie landlord and tenant for too long a period, which would mean that sufficient furnished accommodation would not be made available. He was aware that abuse did take place in some instances, and requisitioning powers had been used where the abuse had been gross. He was seriously considering how the problem could be dealt with. [8th April.

RECENT LEGISLATION

STATUTORY INSTRUMENTS 1948

No. 668. **Act of Sederunt** (Appeals under the Pensions Appeal Tribunals Act, 1943), 1948. March 25.
No. 708. **Control of Employment** (Directed Persons) (Amendment) Order, 1948. April 6.
No. 663. **Electricity** (Conversion Date) Order, 1948. April 1.
No. 707. **Factories Act, 1937** (Extension of Section 46) Regulations, 1948. April 6.
No. 655. **Form of Demand Note** (London) Rules, 1948. March 30.
No. 654. **London County Council** Form of Precept Rules, 1948. March 30.
No. 652. **Rating and Valuation** (Form of Precept—County Councils) Rules, 1948. March 30.
No. 653. Rating and Valuation (Forms of Demand Note) Rules, 1948. March 30.

[Any of the above may be obtained from the Publishing Department, S.L.S.S., Ltd., 88/90, Chancery Lane, London, W.C.2.]

NOTES AND NEWS

Honours and Appointments

Mr. CECIL LAVERY, S.C., Attorney-General, has been appointed to the Senate in Eire.

Notes

Dublin Corporation have passed unanimously a resolution that the Minister for Local Government should be requested to introduce a municipal scheme to provide free legal aid for needy citizens.

The usual monthly meeting of the directors of the Law Association was held on 5th April, 1948, with Mr. T. L. Dinwiddy in the chair. The other directors present were Messrs. C. A. Dawson, Ernest Goddard, H. T. Traer Harris, G. D. Hugh Jones, S. H. Pitt, Frank S. Pritchard, John Venning, and the secretary, Mr. Andrew H. Morton. The sum of £245 was voted in relief of deserving applicants; provisional arrangements were made for the Annual General Court of the Association; Mr. T. Walter Saint was elected a life member of the Association, and other general business was transacted.

GERMAN PATENTS AND TRADE MARKS

Persons in Germany have hitherto been precluded from taking steps (in the United Kingdom) to apply for the grant of a patent or the registration of a trade mark or design.

By three new orders, which took effect on 8th April, made under the Trading with the Enemy Act, 1939, transactions are permitted with persons in Germany in connection with the submission by them of such applications. Transactions in consequence of any such patents granted or trade marks or designs registered are also permitted. Moneys accruing as a result of such transactions are not subject to Board of Trade or Custodian control.

These orders do not affect the position of German-owned patents, designs or trade marks granted or registered prior to the date of the orders; these remain under Board of Trade and Custodian control.

The orders effecting these changes are the Trading with the Enemy (Authorisation) (Germany) (No. 2) Order, 1948 (S.I. 1948 No. 725), the Trading with the Enemy (Transfer of Negotiable Instruments, etc.) (Germany) Order, 1948 (S.I. 1948 No. 726), and the Trading with the Enemy (Custodian) (Amendment) (Germany) (No. 2) Order, 1948 (S.I. 1948 No. 727).

THE CHARGE ON EX-ENEMY (ITALIAN, ROUMANIAN, HUNGARIAN AND BULGARIAN) PROPERTY

The Administration of Enemy Property Department have issued an announcement explaining the consequences of the Peace Treaty Orders in Council (S.I. 1948 Nos. 114–8) and the subsequent Trading with the Enemy (Enemy Territory Cessation) Orders (S.I. 1948 Nos. 157–162) which became operative on 2nd and 3rd February, 1948, respectively.

These Orders in Council create a charge on the property, rights and interests as at 15th September, 1947, in the United Kingdom, Channel Islands, Isle of Man and certain British overseas territory set out in a Schedule to the Orders, belonging to Bulgaria, Hungary, Italy and Roumania and their nationals, with certain exceptions. They prohibit any transfer or dealings with such property, rights and interests except with the consent of the Administrator. The obligations of any person in regard to property vested in a custodian or money paid or still to be paid to him remain unchanged. The Orders in Council, in addition to creating a charge on property, give effect, so far as possible, to certain other provisions of the Treaty of Peace.

The property, rights and interests on which the charge is created under these Orders differ in some respects from the money and property within the scope of the Trading with the Enemy (Custodian) Order, 1939, and on 2nd February the Administrator, acting under the direction of the Board of Trade, released from the charge the property, rights and interests of individuals of Italian, Roumanian, Hungarian and Bulgarian nationality resident in territory which has at no time been enemy territory except property, rights and interests which have been subject to the Trading with the Enemy (Custodian) Order, 1939, or any Order made under s. 7 of the Trading with the Enemy Act, 1939. The property of Italian, etc., nationals who were then resident outside the former enemy or enemy-occupied territories is not subject to the charge unless, as occurred in exceptional cases, it has already been vested in, or paid to, the Custodian.

While the Trading with the Enemy (Enemy Territory Cessation) Orders provide that on 3rd February Finland, Bulgaria, Hungary, Italy, Roumania and Trieste ceased to be treated as enemy territory these Orders do not free any property already vested in the Custodian or the income arising therefrom nor do they relieve any person from an obligation to make a payment to the Custodian which existed on 2nd February, 1948.

Further directions will be issued later by the Administrator in regard to property, rights and interests covered by the charge. The Office of the Administrator is at 7 Crosby Square, London, E.C.3.

COURT PAPERS

SUPREME COURT OF JUDICATURE

EASTER SITTINGS, 1948

COURT OF APPEAL AND HIGH COURT OF JUSTICE

CHANCERY DIVISION

ROTA OF REGISTRARS IN ATTENDANCE ON GROUP A

Date	Emergency Rota	Appeal Court I	Mr. Justice Vaisey	Mr. Justice Roxburgh
			Non-Witness	*Business as listed*
Mon., Apl. 19	Mr. Andrews	Mr. Farr	Mr. Hay	Mr. Blaker
Tues., ,, 20	Jones	Blaker	Farr	Andrews
Wed., ,, 21	Reader	Andrews	Blaker	Jones
Thur., ,, 22	Hay	Jones	Andrews	Reader
Fri., ,, 23	Farr	Reader	Jones	Hay
Sat., ,, 24	Blaker	Hay	Reader	Farr

	Group A		Group B	
Date	Mr. Justice Wynn Parry	Mr. Justice Romer	Mr. Justice Jenkins	Mr. Justice Harman
	Witness	*Non-Witness*	*Business as listed*	*Witness*
Mon. Apl. 19	Mr. Farr	Mr. Jones	Mr. Reader	Mr. Andrews
Tues., ,, 20	Blaker	Reader	Hay	Jones
Wed., ,, 21	Andrews	Hay	Farr	Reader
Thur. ,, 22	Jones	Farr	Blaker	Hay
Fri., ,, 23	Reader	Blaker	Andrews	Farr
Sat., ,, 24	Hay	Andrews	Jones	Blaker

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